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THE COUNCIL AND THE BURGESSES.

The development of republican feeling in Virginia is interestingly illustrated by the history of the relations of the Council and Burgesses, as constituent members of the Assembly. For twelve years after the landing at Jamestown the Council had unlimited control, its executive head being the president or governor of the Colony. Until 1619 the people had no representation. Then the power of the governor and council was shared by representatives of the people for each plantation, their acts being subject to revision or rejection by the Virginia Company of London.

When the charter of the Company was revoked, in 1624, the council, for four years, was the only legal body, though it still annually joined with itself in making laws informal representatives from the people. When, in 1628, the King gave legal recognition to the General Assembly by authorizing Deputy Governor Francis West to call it together, the Council and Burgesses, in a short time, began the practice of sitting apart. Under the charter they imitated the practice of the London Company, which at its General Courts in London convened all its officers and members in one room, but the General Assembly which met under the King's authority would naturally look to Parliament and find an example of divided authority. The immediate effect was to get rid of the supervising power of the Company in London, but the Council sitting alone obtained a veto on the other chamber known as the House of Burgesses, which it did not before possess.

That the governor and council, under this new dispensation, exercised large authority is shown by their issuing proclamations having the force of law. They even ventured to lay taxes and to

impress citizens, but the burgesses were not supine and passed vehement protests against the exercise of any such power. The danger from the Council is probably shown by the General Assembly having to repeat the interdiction quite often. But, on the other hand, that this authority was only one of custom or permission is proved by the fact that when Charles I.'s power was overthrown, in the period of the Commonwealth, the Burgesses assumed all the powers, and elected both councillors and governor.

The incoming of so many educated cavaliers, and the restoration of King Charles II. restored the Council to authority again, and Berkeley, with their support, contrived to bring on Bacon's Rebellion.

When the Rebellion was over, Governor Jeffreys, in 1677, demanded of Major Robert Beverley, clerk of the House, the journals of that body, which he refused. They were seized, whereupon the House passed a resolution of remonstrance, which was sent to England and excited the indignation of the King. An order that Beverley should be put "out of all his offices" was sent over, but he was too popular for the governor to enforce the King's command, and he continued clerk of the House of Burgesses. There was trouble, in 1682, about an over-production of tobacco, and when the Assembly adjourned without any action, the Governor and Council demanded the journal of the House, which Beverley again refused; and it was partly on this account, as well as on account of his sympathy for the poor plant cutters, that he was subjected to much persecution.

He was confined on board of a man-of-war, and was finally released on a writ of *habeas corpus*¹ under heavy bail. The House of Burgesses stood by him and re-elected him clerk. In 1686 Lord Howard, of Effingham, acting by the King's direction, endeavoured to get the House to authorize him and the Council to lay a tax, but the Burgesses stoutly resented this illegal demand, and refused to tie their hands in any way. James II. ordered the dissolution of the House and directed their clerk, Robert Beverley,

¹ Historian after historian have said that Beverley was denied the writ of *habeas corpus*, but this is not true. See QUARTERLY, III., 149-154.

the head of the opposition, to be incapable of holding any office. To punish them further, the governor was directed to hereafter appoint the clerk of the House; which was but temporary.

Dying struggles are sometimes most violent, and the House was really gaining power all the time. After kings who claimed divine rights came the English Revolution of 1688 and kings who traced their rights to rule to the people of England. The governor and council now often found themselves on the defensive.

If, as Governor Gooch declares, the Council had the right of originating bills, the records show that they never did so. They practically confined themselves to amending the measures of the House, seldom ever using their veto outright.

Spotswood is full of complaints of the "undutiful" behavior of the Burgesses, which in one of his letters, in 1713, he ascribes to "a defect in the constitution which allows to every one tho' but just out of the condition of a servant and that can but purchase half an acre of land an equal vote with the man of best estate in the country."

Perhaps the summit of audacity was reached, when the Burgesses, in 1756, sent their mace-bearer within the bar of the supreme court of the Colony over which Governor Dinwiddie presided and took away such ministers of that court as were members of the House. It was now the turn of the House to search the journals of the Council!

From practically an absolute House, who were not always as respectful as they should have been, it was an easy step to a sovereign convention in 1774, and independence in 1776.

When Virginia emerged from the war of the Revolution, it was as the headquarters of the Democratic-Republican party, in contrast with Massachusetts, which became the headquarters of the Federalist or aristocratic party.

Although certain writers have tried to represent the New England States as original democracies, the least study seems to show that the aristocratic principle was more deeply imbedded in their institutions than in Virginia. In Virginia, through nearly the whole colonial period, the suffrage was right of every free-man, and though, in 1670, the suffrage was apparently limited to

freeholders, the law did not define the freehold till 1736. In New England the suffrage was a *privilege*; and even after 1736, the actual voters in Massachusetts were less proportionately than in Virginia. Aristocracy declined relatively in Virginia, though some writers have been dazzled by the grandeur of some of the upper classes into writing of "the growth of the aristocracy." Edmund Randolph, who was certainly a member of one of the "First Families," referred to their influence in Virginia, at the beginning of the Revolution, as "Little and feeble and incapable of daring to assert any privilege clashing with the rights of the people at large." Henry, *Patrick Henry*, 1,209.

On the other hand, Weeden in his *Social and Economic History of New England*, says that "the New England institutions were democratic in form, but aristocratic in the substance of the administration."

The following pages from the Journal of the House of Burgesses afford evidence of an amusing tilt between the two branches of the General Assembly, in 1749, which was put an end to by the Governor abruptly dissolving the session.

PROCEEDINGS OF THE HOUSE OF BURGESSES.

Thursday, May 1, 1749.

The house took into consideration the Report of the Committee to whom the Treasurer's Accounts were referred; and the said Report was read, and agreed to by the House.

Resolved, That the said Accounts do pass.

Ordered, That M^r Carter do carry the said Accounts to the Council, for their concurrence.

Upon a Motion,

Ordered, That an address be made to his Honour the Governor, to lay before the House the commission from his Majesty to the Right Hon. the Lord *Albemarle*, for appointing him Governor and Commander in Chief of this Dominion: And that M^r Ludwell, M^r Carter M^r Beverley, M^r Braxton, M^r Peter Randolph, and M^r Bland, do wait on his Honour with the said Address.

M^r Carter² informed the House, That he had in his hand a *Virginia Gazette*, in which are contained some Things that he thought highly reflected on the Proceeding of this House: And he read the same, as follows:

² Landon Carter of "Sabine Hall," Richmond County.

From the Council-Chamber, March 27, 1749.

It is Ordered by the Council, That the following Representation and Resolutions, made and agreed to this Day, with respect to the Resolves of the House of Burgesses, in relation to their pretended Right of searching the Journals of the Upper House of Assembly, be printed in the next *Virginia Gazette*.

*N. Walthoe, Cl. G. A.*³

'As the Council have often demonstrated the sincerest disposition to 'preserve a good Correspondence with the House of Burgesses, and 'always paid a due regard to their just Rights, they are the more aston- 'ish'd at the Resolves in their printed Journals of the 10th and 14th of 'this instant; by which the Council stand accused, without the least Shadow of Reason or Justice, of having violated an undoubted Right and Privi- 'lege of their House.

'Had the Burgesses, agreeably to the Parliamentary Method, before 'they made those hasty Resolves, vouchsafed to desire the Reasons of the 'Council's Conduct, they should not have any Thing to object to it, and 'would have received the fullest Satisfaction.

'Whenever either House has been dissatisfied with the other, Confer- 'ences have been usually desir'd, and the Subject Matter of Dispute 'amicably debated; and thereby Misunderstandings commonly rectify'd, and 'that Harmony and good Agreement, which ought always to subsist be- 'tween them, cultivated and maintained.

'But since the Burgesses have presum'd to run counter to this ancient, 'decent, and establish'd Method, having probably had nothing less in their 'Thoughts than a becoming respect, and perhaps conscious that they had 'acted in Opposition to Reason and Precedent; the Council find them- 'selves under the unpleasing Necessity of publicly vindicating the Legality 'of their Proceeding, which has been reflected upon with such mistaken 'Heat, and unparallel'd Severity.

'The Question is, *Whether the Burgesses have an undoubted right 'to search the Journals of the Upper House, without their Leave?*

'The Council say, That the constant and uninterrupted Practice is 'the Law of Parliament; that this pretended Right now claim'd by the 'Burgesses, was unknown to any preceding Assembly; that the regular 'Course to obtain a knowledge of their Proceedings, in any Matters trans- 'acted in their House, is by a Message, to desire to be inform'd thereof; 'and insist upon this Method being agreeable to the Proceedings of As-

³ Nathaniel Walthoe. See QUARTERLY, XVII., 150; Dinwiddie Papers, I., 9. As clerk of the Council sitting in legislative session, he was called "Clerk of the General Assembly" (Cl. G. A.).

'sembly, well warranted by precedent; and what the Burgesses could never 'have doubted of, had they consulted their own Journals. The Council, 'to confirm their Assertion, and prevent all future Controversy, have 'thought proper to exhibit the following Copies of Entries upon their 'Journals.

'In their Journal of the 20th of *June*, 1730, there is enter'd;

"A Message from the House of Burgesses, by Mr *Kemp*, and others :
"May it please your Honours,

"The House of Burgesses being inform'd, That a Paper was entered
"in your Journal, on *Thursday* last, by *Richard Fitzwilliams*, Esq, Sur-
"veyor General of the Customs, containing several unjust and injurious
"Reflections and Calumnies upon them and their Proceedings, highly
"derogatory to the Honour of the House, and in open Breach and Viola-
"tion of their undoubted Rights and Privileges, have ordered us to desire
"your Honours to send them a Copy of that Paper, as it is enter'd upon
"your Journals."

'The Council immediately took the Message into consideration; and
'after Debate thereon, the Question was put, That the Copy of the Journal
'of *Thursday* last, so far as relates to *Richard Fitzwilliams*, Esq; be sent
'to the House of Burgesses?

it passed in the Affirmative.

'And a Copy was accordingly sent to the House of Burgesses, by the Clerk
'of the General Assembly.

'This Precedent was made when Mr *Holloway* was Speaker, and Mr
'*John Randolph* (who drew the Message) Clerk, both eminent Lawyers,
'well acquainted with Parliamentary Affairs, jealous and careful of the
'Privileges of the House of Burgesses.

'The next Precedent is on the Council's Journal of the 25th of
'*August*, 1736, when Sir *John Randolph* was Speaker, as follows:

"A Message from the House of Burgesses, by Mr *Willis*, and others:

"That they desir'd to know what their Honours had done with the
"Bill, sent up from their House, intituled, *An Act, for Repealing the Act*,
"intituled, *an Act, for amending the Staple of Tobacco; and for prevent-*
"*ing Frauds in his Majesty's Customs, &c.*

"Ordered, That the Clerk of the General Assembly go to the House
"of Burgesses, and acquaint them, in Answer to the said Message, That
"the Council have under their consideration the Bill, intituled, *An Act*,
"*for repealing the Act, for amending the Staple of Tobacco; and for pre-*
"*venting frauds in his Majesty's Customs:* And Two other Acts, to
"amend and explain, and for continuing and further amending that Act;
"and having read the same twice, upon a Question put, for reading it a
"third Time,

"It passed in the Negative."

'These Instances incontestibly prove whose Rights have been invaded, 'unanswerably shew what the present House of Burgesses ought to have 'done, and sufficiently justify the Proceedings of the Council, and these 'their Resolves.

'*Resolved*, That the Privileges claim'd by the House of Burgesses, in 'their Resolve of the 14th of this Instant *March*, is new, unknown to their 'Predecessors, and inconsistent with the Constitution.

'*Resolved*, That it is the Right of the Council to keep the Possession 'of their own Journals; and the demanding their Journals by the Messen- 'gers of the House of Burgesses, as they report to their House the 10th of 'this Instant *March*, is a Breach of the Privilege of the Council; and that 'the Resolve of the House of Burgesses of the 14th also of this Instant '*March*, without asking a Conference, is injurious to the Council, unpar- 'liamentary, and a notorious Infringement of their indubitable Rights.

N. Walthoe, Cl. G. A.

And it is thereupon

Resolved, That there is contained in the said *Gazette*, a malicious and scandalous Libel, highly and injuriously reflecting upon the Proceedings of this House.

Ordered, That *William Parks*,⁴ Printer of the said Paper, be immediately taken into Custody of the Serjeant at Arms, and brought to the Bar of this House to be examined.

William Parks, Printer of the *Virginia Gazette*, was brought to the Bar of the House, in Custody of the Sergeant at Arms; and being examined, said, That on *Thursday* Evening, the 30th of *March*, when he return'd from *York*, (where he had been the Two preceding Days) upon enquiring of his Servants what Forwardness they were in with the *Gazette*, to be publish'd that Night, *William Hunter*⁵ told him, that there was an order from the Council, brought by *John Collet*,⁶ the Door-keeper, to be printed in that Day's *Gazette*; but that the said *Collet* being

⁴ For sketch of William Parks, see QUARTERLY, VII., 10, 11.

⁵ For sketch of William Hunter, see QUARTERLY, VII., 13, 14; 154-156; XIV., 149.

⁶ John Collet's will was proved at Yorktown, March 19, 1749. After legacies to his wife Susanna; Solomon Davis, son of John Davis, of James City Co.; Henry Bryan, son of Bridget Bryan; John Carter, son of John Carter, dec'd; Thomas Carter, son of John Carter, dec'd; he gave the rest of his estate to Benjamin Waller. His wife, Susannah Collet, of Williamsburg, left most of her property, by her will proved May 18, 1752, to George Gilmer, Apothecary of Williamsburg, and to his son, George Gilmer, "now gone home to England with Mr. King"; a handsome mourning ring worth 5 guineas to John Randolph, Esq., barrister.

inform'd he was not at home, carried it away. He soon after return'd, and delivered the said Orders to *William Hunter*, which were inclosed and directed to *William Parks*, Printer of the *Virginia Gazette*, with Orders from the Council, that whoever managed his Business in his Absence, should open the Seal, and print their Orders in the next *Gazette*; which Orders were sign'd *N. Walthoe*, Cl. G. A. and were accordingly printed, tho' not published at that Time.

Ordered, That Mr *Carter* do go up with a Message to the Council, and acquaint them, That the House of Burgesses having ordered *William Parks*, the Printer of the *Virginia Gazette*, to be taken into Custody, for printing and publishing in the said Paper, a malicious and scandalous Libel, highly and injuriously reflecting on the Proceedings of the House of Burgesses, the said Printer, upon his Examination at the Bar, hath declared, That he printed and published the same by the express Order of the Council; but as the said Libel is wrote in such abusive and indecent language, and the Author or Authors thereof appear to be so little acquainted with (not to say wholly ignorant of) Parliamentary Proceedings; and as it is unparliamentary and beneath the character assumed by the Council, to have their proceedings printed in a common News-Paper, the House of Burgesses are unwilling to give Credit to an Assertion that carries in it so gross a Reflection on the Wisdom and Honour of the Council; and therefore desire they will inform them, whether it was done by their Direction, that the House of Burgesses may consider in what Manner they shall proceed against the Printer.

Mr *Ludwell* reported, That the Persons appointed had according to Order, addressed the Governor to lay before the House the commission from his Majesty to the Right Hon. the Lord Albemarle for appointing him Governor and Commander-in-Chief of this Dominion, who replied that he would order the Clerk of the Council to deliver the said Commission by a Message to the House, or in case that could not be found, that Lord *Orkney's* Commission should be delivered.

A Message from the Governor, by Mr *Walthoe*:

Mr *Speaker*,

I am commanded by his Honour the Governor, to lay before the House the Commission from his Majesty for appointing Lord Orkney Governor of Virginia.

The fame being read,

Ordered, That the Thanks of this House be returned to the Governor, for laying the said Commission before the House: and that the Persons ordered to address him for the same, do wait on his Honour for that Purpose.

A Message from the Council, by Mr *Walthoe*:

That they have agreed to the Bill, intituled, *An Act, for paying the*

Burgesses Wages in Money, for this present Session of Assembly; without any Amendment.

That they have agreed to the Resolve, in Relation to Printing a new Body of the Laws of *Virginia*; without any Amendment.

And that they have passed the Treasurer's Accounts.

And that he was ordered to deliver the following written Message:

Mr Speaker,

The Council do avow the Paper, at which your House hath taken such great Offense, to be their Representation and Resolves; and that the same were printed by William Parks by their express Command. And do insist notwithstanding the indecent Language you have been pleased to treat them with, that the same are Parliamentary, and contain only a Justification of the Council, which they were forc'd into, by same hasty Resolves of your House. They further inform your House, that Reason and Argument are not to be borne down by a Torrent of abuse and Detraction; and if your House think that the Representation and Resolves will not stand the test of Reason and Precedent, you may answer them if you think fit.

N. WALTHOE, Cl. G. A.

Mr Whiting reported, That the Committee appointed had, according to Order, examined the rest of the Inrolled Bills, and rectified such Mistakes as had been found therein; and that the said Bills are truly Inrolled.

Ordered, That *Mr Whiting* do carry the Inrolled Bills to the Council, for their Inspection.

The House took into consideration the written Message from the Council; and thereupon,

Ordered, That a Committee be appointed to prepare an answer to the said Message; and it is accordingly referred to *Mr Benjamin Waller* and *Mr Ludwell*, and that they do immediately withdraw and prepare the same.

A Message from the Council, by *Mr Walthoe*:

That they have inspected the Inrolled Bills, and are satisfied they are truly Inrolled.

Ordered, That *Mr William Parks* be discharged out of Custody of the Serjeant at Arms, without paying Fees.

A Message from the Governor by *Mr Walthoe*:

Mr Speaker,

The Governor commands the immediate Attendance of this House in the Council Chamber.

Mr Speaker, with the House, went up accordingly; and the Governor was pleased to give his assent to the following Public and Private Bills: